



# CALIFORNIA STATE BOARD OF EDUCATION

## MAY 2004 AGENDA

### SUBJECT

Funding for Countywide Charter Schools (Assembly Bill 1994):  
Adopt Amendments to Title 5, California *Code of Regulations*

☒ Action

☒ Information

☐ Public Hearing

### RECOMMENDATION

California Department of Education (CDE) staff recommends that the State Board of Education (SBE) consider comments received during the public comment period and at the public hearing, and take action to adopt the regulations.

### SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

At the January 2004 meeting, the SBE took action to approve the proposed regulations, the initial Statement of Reasons, and the Notice of Proposed Rulemaking, with technical modifications from the Executive Director of the SBE; direct staff to proceed with the 45-day public comment period in accordance with the Administrative Procedure Act; and direct staff to conduct a public hearing on the proposed regulations pursuant to California *Code of Regulations*, Title 5, Section 18460.

The public comment period ended and the public hearing was held on March 8, 2004. A summary of the public comments is provided in this agenda item.

### SUMMARY OF KEY ISSUES

AB 1994 (Chapter 1058, Statutes of 2002) contained a number of significant programmatic provisions affecting charter schools, and the bill requires the SBE to adopt regulations to implement certain aspects of the statutory changes. The Advisory Commission on Charter Schools (ACCS) discussed various versions of AB 1994 programmatic implementation regulations on several occasions, both in concept and with regard to certain specific elements. During August 2003, SBE members received an information memorandum with a version of the permanent regulations that the ACCS had tentatively endorsed in July. However, at its September 2003 meeting, the ACCS considered the regulations further, and proposed several significant changes. The attached text, which was also provided as part of an information memorandum in October 2003, reflects the ACCS-recommended changes.

The proposed regulations have been separated from other AB 1994 regulations in an effort to have them adopted and approved by the Second Principal Apportionment in June 2004. There is concern that some of the provisions of the other programmatic regulations may generate controversy and take longer to adopt. The funding mechanism proposed in this regulation is modeled after the existing funding method for other county-approved charter schools; therefore, it is anticipated that the adoption process for this regulation could be more straightforward.

## **Report on Public Hearing**

Consistent with the requirements of the Administrative Procedure Act, the public hearing regarding the proposed regulations was scheduled for Monday, March 8, 2004, at the California Department of Education, 1430 N Street, Room 1101, Sacramento, California, beginning at 1:00 p.m. An audiotape of the public hearing was made, and Maryanna Rickner will provide a copy of the audiotape to any SBE member so desiring.

*The public hearing was called to order at 1:00 p.m. on the prescribed date and at the prescribed location. There were no speakers present to comment on the proposed regulations. The public hearing was recessed for one-half hour in the event that a potential presenter might have been delayed. The public hearing was reconvened at 1:31 p.m. No one wishing to present comments had arrived. The public hearing was adjourned at 2:05 p.m.*

One comment was received during the public comment period that ended at 5:00 p.m. on Monday, March 8, 2004. The comment has been summarized and a response provided to the Board in this agenda item.

## **Summary of Public Comments/Key Issues**

- The proposed regulation would create a much more complicated apportionment system for most school districts.
- The proposed regulation would result in a reduction in funding for affected basic aid districts.
- The proposed regulation exceeds statutory authority.

A summary of the comments and responses follow:

## **Staff Recommendation**

Recommend that the State Board adopt the amendments for the regulations with no changes.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF JANUARY 23, 2004, THROUGH MARCH 5, 2004, AND THE PUBLIC HEARING, MARCH 8, 2004.

**Comment:** Schools for Sound Finance, via letter, commented that the proposed regulation has two negative consequences for school districts: (1) it creates a complicated apportionment system to no purpose because the in lieu property tax payments that would be made to countywide charter schools for the ADA of district residents attending the school will be backfilled by state aid, therefore the ADA should be funded directly from state aid; and (2) it results in a reduction in funding for basic aid districts for those district residents attending the countywide charter school.

The letter further states, “the proposed Section 11967.8 subdivision (b) defines “sponsoring local educational agency” in a way that exceeds the definition in *Education Code* Section 47632 (i). If the Legislature intended the definition proposed in subdivision (b), it would have amended *Education Code* Section 47632 (i) to include that definition”.

**Response:** *The proposed regulation complies with the provisions of Assembly Bill (AB) 1994 (Chapter 1058, Statutes of 2002). The SBE has general authority to adopt regulations that are not inconsistent with the law. In this particular instance, the Legislature created a statutory scheme that allowed for the creation of countywide charter schools but did not provide a funding mechanism for such charter schools. The proposed regulation provides a funding mechanism that is both consistent with the statutory scheme of AB 1994 and with the funding model already in use for funding county community charter schools. The definition of “sponsoring local educational agency” for purposes of countywide charter schools is similar to the definition in statute for county community charter schools. Therefore, it is reasonable to extend this definition to countywide charter schools.*

*Further, AB 1994 was intended to be fiscally neutral with regard to funding formulas for charter schools under Proposition 98. The proposed regulation is consistent with that intent. It creates neither incentive nor disincentive for a county to approve a countywide charter school. The proposed regulation might result in additional costs to any basic aid district that has students who choose to attend a countywide charter school because basic aid districts will not receive a backfill of state aid for any in lieu property tax payments those districts provide to the countywide charter. However, to fund all countywide charter schools entirely from state aid would result in an additional cost to the state and may create an incentive for the creation of countywide charters strictly because of the additional state aid that would be provided to such schools.*

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#### **FISCAL ANALYSIS (AS APPROPRIATE)**

The statutory changes enacted by AB 1994 overall will result in increased costs associated with the increased workload to the CDE and SBE to review, approve, and oversee a greater number of statewide charter schools. However, the statutory provisions that allow counties to approve countywide charter schools will have no workload impact on CDE. Therefore, no state or local fiscal impact will result from these regulations.

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#### **ATTACHMENT**

- [Attachment 1:](#) Notice of Proposed Rulemaking (4 Pages)
- [Attachment 2:](#) Initial Statement of Reasons (2 Pages)
- [Attachment 3:](#) Proposed Regulations (1 Page)

# CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street; Room 5111  
Sacramento, CA 95814



## TITLE 5. EDUCATION

### CALIFORNIA STATE BOARD OF EDUCATION

#### NOTICE OF PROPOSED RULEMAKING

##### Countywide Charter Schools

[Notice published January 23, 2004]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

#### PUBLIC HEARING

Program staff will hold a public hearing beginning at **1:00 p.m. on March 8, 2004** at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. The State Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. The written comment period ends at **5:00 p.m. on March 8, 2004**. The State Board will consider only written comments received by the Regulations Adoption Coordinator by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator  
California Department of Education  
LEGAL DIVISION  
1430 N Street, Room 5319  
Sacramento, California 95814  
E-mail: [dstrain@cde.ca.gov](mailto:dstrain@cde.ca.gov)  
Telephone: (916) 319-0860  
FAX: (916) 319-0155

#### AUTHORITY AND REFERENCE

Authority for these regulations is found in *Education Code* Section 33031. *Education Code* Section 33031 is the State Board's general authority to adopt rules and regulations for the government of the day and evening schools of the state that are not inconsistent with the requirement of statute.

Additional authority is provided in *Education Code* Section 47605.6(b)(5)(I), which requires the State Board to adopt regulations to determine the manner in which financial audits for countywide charter schools shall be conducted.

References are made to *Education Code* sections 47632 and 47651. These statutes govern the funding of charter schools.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The proposed regulation is necessary to fund and to determine the manner in which financial audits shall be conducted for countywide charter schools, which were established by Assembly Bill (AB) 1994 (Chapter 1058, Statutes of 2002).

Specifically, this adds Section 11967.8 to Title 5 of the California Code of Regulations to provide technical clarity regarding the funding calculation and process for providing operational funding to countywide charter schools. This section addresses a similar issue as that addressed in Section 11967.7 above but for countywide, rather than statewide charters. However, in this case, the regulations apply an exiting statutory definition of “sponsoring local education agency” that is currently applied to other county-authorized charter schools.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district that must be reimbursed in accordance with Government Code Section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of this regulation will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Effect on small businesses: The proposed amendments to the regulations do not have an effect on small businesses because they provide a process for a new type of charter school to obtain funding and therefore, have no effect on existing charter schools or small businesses. The proposed regulations do not impose additional workload on small businesses or contractors funded by the Department.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## **CONTACT PERSONS**

Inquiries concerning the substance of the proposed regulations should be directed to:

Eileen Cubanski, Administrator  
California Department of Education  
Charter School Division  
1430 N Street, Room 5401  
Sacramento, CA 95814  
E-mail: [ecubansk@cde.ca.gov](mailto:ecubansk@cde.ca.gov)  
Telephone: (916) 322-6029  
FAX: (916) 322-1465

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0860.

## **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulation as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's Web site at <http://www.cde.ca.gov/re/lr/rr/>

### **REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY**

Pursuant to the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990*, any individual with a disability who requires reasonable accommodation to attend or participate in a meeting or function of the California State Board of Education (SBE), may request assistance by contacting the Jennifer Jackson, Charter School Division, 1430 N Street, Sacramento, CA, 95814; telephone, (916) 322-6029; fax, (916) 322-1465.

## INITIAL STATEMENT OF REASONS

### SECTION 11967.8. Countywide Charter Schools

#### SPECIFIC PURPOSE OF THE REGULATIONS

The proposed regulations will clarify existing law with regard to the funding process to be used for countywide charter schools, and will determine the manner in which financial audits for countywide charter schools shall be conducted.

#### NECESSITY/RATIONALE

Assembly Bill (AB) 1994 (Chapter 1058, Statutes of 2002) amended the Charter School Act of 1992, and added *Education Code* Section 47605.6 that creates new responsibilities for county boards of education to review and approve charter schools of countywide interest that propose to operate on multiple sites within the county.

#### SECTION 11967.8

This section provides technical clarity regarding the funding and operations of countywide charter schools, as well as the conduct of audits and resolution of audit exceptions. The regulations are proposed to be effective for the whole of 2003-04 and each fiscal year thereafter.

**Subdivision (a).** Clarifies that a countywide charter school is funded in keeping with the funding provisions otherwise applicable to charter schools and is directly funded. These are sensible elaborations on a statute that is incomplete and result in no additional costs to the state for students who attend countywide charter schools in lieu of other charter schools.

**Subdivision (b).** Clarifies the meaning of “sponsoring local education agency” for purposes of countywide charter schools. This clarification ensures that local tax funds are transferred appropriately to countywide charter schools based upon the revenues accruing to the districts in which the schools’ pupils resides, and ensures that related financial calculations are made properly. This is sensible elaboration on a statute that is incomplete and results in no additional costs to the state for students who attend countywide charter schools in lieu of other charter schools.

**Subdivision (c).** Clarifies how funds are technically to be allocated on behalf of countywide charter schools. This is a sensible elaboration on a statute that is incomplete and results in no additional costs to the state for students who attend countywide charter schools in lieu of other charter schools.

**Subdivision (d).** Provides technical authorization for inclusion of countywide charter schools in STRS and PERS (which is clearly envisioned in statute). These are sensible elaborations on a statute that is incomplete and result in no additional costs to the state for students who attend countywide charter schools in lieu of other charter schools.

**Subdivision (e).** Extends to countywide charter schools the regulations pertaining to audits and resolution of audit exceptions that apply to schools chartered by the State Board of Education on appeal. These are sensible elaborations and are consistent with the specific direction set forth in Education Code Section 47605.6(b)(5)(I).



**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS.**

The State Board did not rely upon any other technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of these regulations.

**REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.**

The State Board was not presented with other viable alternatives to the adoption of these regulations.

**REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.**

The State Board has not identified any alternatives that would lessen any adverse impact on small business.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.**

The proposed regulations would not have a significant adverse economic impact on any business because they provide a process for a new type of charter school to obtain funding and therefore, have no effect on existing charter schools or small businesses.

1 Title 5. EDUCATION

2 Division 1. State Department of Education

3 Chapter 11. Special Programs

4 Subchapter 19. Charter Schools

5 *Add Section 11967.8 to read:*

6 **Section 11967.8. Countywide Charter Schools.**

7 For the purpose of a countywide charter school approved pursuant to Education Code Section  
8 47605.6, the following shall apply:

9 (a) The charter school shall be funded pursuant to Chapter 6 of Part 26.8 of the Education  
10 Code (commencing with Section 47630) and receive its funding directly.

11 (b) The charter school's "sponsoring local education agency" for purposes of Chapter 6 of  
12 Part 26.8 of the Education Code shall be the school district of residence of each of the pupils  
13 attending the school.

14 (c) The warrant shall be drawn in favor of the superintendent of schools of the county that  
15 approved the school, and that county superintendent is authorized to establish appropriate funds  
16 or accounts in the county treasury for the school.

17 (d) The county superintendent is authorized to make necessary arrangements for the school's  
18 participation in State Teachers' Retirement System and/or Public Employees Retirement System  
19 in accordance with Education Code Section 47611.3.

20 (e) For the purposes of Education Code Section 47605.6(b)(5)(I), the provisions of paragraph  
21 (9) of subdivision (f) of Section 11967.5.1 shall apply. If the school has multiple sites, the  
22 charter shall indicate how each of the school's sites will be appropriately included in the  
23 processes of auditing and resolving audit exceptions.

24 This section shall apply for the entire 2003-04 fiscal year and each fiscal year thereafter.

25 NOTE: Authority cited: Sections 33031 and 47605.6(b)(5)(I), Education Code. Reference  
26 Section 47611.3 and Chapter 6 of Part 26.8 (commencing with Section 47630), Education Code.

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